

§ 219.905

(iii) Documents generated in connection with decisions on post-accident testing.

(iv) Documents verifying the existence of a medical explanation of the inability of a covered employee to provide a urine sample.

(2) Records related to test results:

(i) The railroad's copy of the drug test custody and control form, including the results of the test.

(ii) Documents related to the refusal of any covered employee to submit to a drug test required by this part.

(iii) Documents presented by a covered employee to dispute the result of a drug test administered under this part.

(3) Records related to other violations of this part.

(4) Records related to evaluations:

(i) Records pertaining to a determination by a substance abuse professional concerning a covered employee's need for assistance.

(ii) Records concerning a covered employee's compliance with the recommendations of the substance abuse professional.

(5) Records related to evaluation and training:

(i) Materials on alcohol misuse awareness, including a copy of the railroad's policy on alcohol misuse.

(ii) Documentation of compliance with the requirements of § 219.23.

(iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol testing based on reasonable suspicion.

(iv) Certification that any training conducted under this part complies with the requirements for such training.

§ 219.905 Access to facilities and records.

(a) Release of covered employee information contained in records required to be maintained under §§ 219.901 and 219.903 shall be in accordance with 49 CFR part 40 and this section. (For purposes of this section only, urine drug testing records shall be considered equivalent to breath alcohol testing records.)

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(b) Each railroad shall permit access to all facilities utilized in complying with the requirements of this part to the Secretary of Transportation or any DOT agency with regulatory authority over the railroad or any of its covered employees.

(c) Each railroad shall make available copies of all results for railroad alcohol and drug testing programs conducted under this part and any other information pertaining to the railroad's alcohol and drug misuse prevention program, when requested by the Secretary of Transportation or any DOT agency with regulatory authority over the railroad or covered employee.

APPENDIX A TO PART 219—SCHEDULE OF CIVIL PENALTIES¹

Section	Violation	Willful Violation
Subpart A—General		
219.11 General Conditions for Chemical Tests (b)(1), (3), or (4) Employee unlawfully refuses to participate in testing	(—)	\$5,000
(b)(2) Failure to give necessary medical treatment priority, or improperly requiring urine sample ..	\$3,000	8,000
219.23 Notice to employees:		
(a) Failure to give notice of FRA test	1,000	4,000
(b) Failure to give notice of basis for FRA test	500	2,000
(c) Use of Subpart C forms for other types of tests	500	1,000
Subpart B—Prohibitions		
219.101 Alcohol and drug use Employee violates prohibition	(—)	10,000
219.104 Responsive action:		
(a) Failure to remove from service immediately	3,000	8,000
(b) Failure to provide notice	1,000	4,000
(c) Failure to provide prompt post-suspension hearing	2,000	7,000
(d) Unlawful return to service	2,000	7,000
(e) Improper alcohol test	1,000	4,000
219.105 Railroad's duty to prevent violations:		
(a) Permitting employee to go or remain on duty in violation of prohibitions	7,000	10,000
(b) Failure to exercise due diligence to assure compliance with prohibition	2,500	5,000

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APPENDIX A TO PART 219—SCHEDULE OF CIVIL
PENALTIES ¹—Continued

Section	Violation	Willful Violation
Subpart—C: Post-Accident Testing		
219.201 Events for which testing is required:		
(i) Failure to facilitate conduct of required post-accident toxicological test by making reasonable inquiry and good faith judgments with respect to circumstances of accident/incident; by failing to take all practicable steps to require employee participation; or by otherwise failing to comply with Subpart C such that test cannot be conducted (each employee not tested is a violation)	5,000	7,500
(ii) Required employee to provide samples under authority of Subpart C where one or more testing criteria not present, due either to mistake of law or failure to make reasonable inquiry or exercise good faith judgment	5,000	10,000
(iii) Failure to promptly provide FRA with report describing decision on whether event qualified for testing	1,000	3,000
219.203 Responsibilities of Railroads and Employees:		
(a) Failure to exclude employee from impact of fatal train incident testing where appropriate	2,500	5,000
(b)(1) Delay in obtaining samples account failure to make every reasonable effort	2,500	5,000
(b)(4) Improper release of or failure to recall employee subject to testing, or improper recall to duty	4,000	7,500
(c) Place of sample collection; by whom	2,500	5,000
(d) Failure to notify FRA of an employee injury requiring FRA intervention	2,500	5,000
219.205 Sample collection and handling:		
(a) Failure to observe requirements with respect to sample collection, marking and handling	2,500	5,000
(b) Failure to provide properly prepared information sheets with samples	1,000	2,000
(d) Failure to promptly forward samples	2,500	5,000
219.207 Fatality:		
(a) Failure to contact custodian and request assistance	2,500	5,000
(b) Failure to notify FRA where intervention needed	2,500	5,000
219.209 Reports of tests and refusals:		
(a) Failure to provide telephonic report	1,000	2,000
(b) Failure to provide written report (samples not provided)	1,000	2,000

APPENDIX A TO PART 219—SCHEDULE OF CIVIL
PENALTIES ¹—Continued

Section	Violation	Willful Violation
219.213 Unlawful refusals, consequences:		
(a) Failure to take action against employee who refuses to provide samples, or permitting employee to return without meeting conditions	2,500	5,000
(b), (c) Failure to provide timely notice and proper hearing	2,500	5,000
Subpart D—Authorization to test for casue		
219.301 Testing for reasonable cause:		
(a) Employee required, under authority of this subpart, to submit to testing without reasonable cause	5,000	7,500
(f)(2) Employee required to participate in testing after expiration of 8 hours	2,000	4,000
(f)(4) Employee tested after release from duty	1,500	3,000
219.303 Breath testing procedures and safeguards (incl. optional blood test)	2,000	4,000
219.305 Urine test: failure to comply with Subpart H procedures and safeguards	2,000	4,000
219.309 Employee notice	1,000	4,000
Subpart E—Identification of troubled employees		
219.401 Requirements for policies:		
(i) Failure to adopt or publish or wholesale failure to implement policy required by Subpart E	5,000	7,500
(ii) Failure to implement as to individual employee	2,500	5,000
219.407 Alternate policies: Failure to file agreement or other document or provide timely notice of revocation	1,000	2,000
Subpart F—Pre-Employment Drug Screen		
219.501 Pre-employment drug screens:		
(a) Failure to perform preemployment drug screen prior to employing applicant in covered service	2,500	5,000
(b)(i) Failure to provide prior notice of drug screen	2,000	4,000
(ii) Maintaining record of declination of test	500	1,000
(c) Failure to comply with Subpart H—Procedures and safeguards	2,000	4,000
219.503 Notification; records Failure to notify applicant of test results or to properly maintain or retain records	2,000	4,000
219.505 Refusals; consequences of positive:		
(a) Employing one who has refused test in covered service	2,500	5,000
(b) Employing applicant who has tested positive in covered service	3,000	8,000

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APPENDIX A TO PART 219—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section	Violation	Willful Violation
Subpart G—Random Drug Testing		
219.601 Programs:		
(a) Failure to submit to FRA on a timely basis a random testing program that satisfies requirements of this subpart and subpart H	5,000	7,500
(b)(1) Required employee to provide sample in reliance on this subpart based on other than random selection	5,000	10,000
(b)(2) through (b)(7) Fail to conform to approved criteria in implementing program	2,000	4,000
(d)(1) Failure to provide timely notice to each employee	1,000	4,000
(d)(2) Failure to implement program on timely basis	5,000	7,500
219.603 Participation in testing; refusals:		
(a) Failure to require a selected employee to cooperate in random testing	2,500	5,000
(b)(1) Failure to take action against employee who refuses to provide sample	2,500	5,000
(b)(2) Failure to provide timely notice and proper hearing	2,500	5,000
(c) Permitting employee to return without meeting conditions	2,500	5,000
219.605 Positive test results: (a) Test deemed positive without following Subpart H procedures	2,000	4,000
Subpart H—Procedures and Safeguards For Urine Drug Testing		
219.701 Standards for urine drug testing (e.g., use of uncertified lab or other violation of 49 CFR part 40 not referenced below, absence of required provisions in contract, etc.).	5,000	7,500
219.703 Collection	2,000	4,000
219.705 Drugs tested	2,000	4,000
219.707 Review by MRO	2,000	4,000
219.709 Retest	2,000	4,000
219.711 Confidentiality	3,000	6,000
219.713 Reports; FRA access	500	2,000

¹ A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$22,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

[54 FR 53259, Dec. 27, 1989, as amended at 55 FR 22794, June 4, 1990; 63 FR 11621, Mar. 10, 1998]

APPENDIX B TO PART 219—DESIGNATION OF LABORATORY FOR POST-ACCIDENT TOXICOLOGICAL TESTING

The following laboratory is currently designated to conduct post-accident toxicological analysis under Subpart C of this part: NWT Inc., 1141 E. 3900 South, Suite A-110, Salt Lake City, UT 84124, Telephone:

(801) 268-2431 (Day), (801) 483-3383 (Night/Weekend).

[60 FR 61665, Dec. 1, 1995, as amended at 62 FR 63467, Dec. 1, 1997]

APPENDIX C TO PART 219—POST-ACCIDENT TESTING SAMPLE COLLECTION

1.0 *General.*

This appendix prescribes procedures for collection of samples for mandatory post-accident testing pursuant to subpart C of this part. Collection of blood and urine samples is required to be conducted at an independent medical facility.

(SURVIVING EMPLOYEES)

2.0 *Surviving Employees.*

This unit provides detailed procedures for collecting post-accident toxicological samples from surviving employees involved in train accidents and train incidents, as required by 49 CFR part 219, subpart C. Subpart C specifies qualifying events and employees required to be tested.

2.1 *Collection Procedures; General.*

All forms and supplies necessary for collection and transfer of blood and urine samples for three surviving employees can be found in the FRA post-accident shipping box, which is made available to the collection site by the railroad representative.

Each shipping box contains supplies for blood/urine collections from three individuals, including instructions and necessary forms. The railroad is responsible for ensuring that materials are fresh, complete and meet FRA requirements.

2.11 *Responsibility of the Railroad Representative.*

In the event of an accident/incident for which testing is required under subpart C of this part, the railroad representative shall follow the designated set of instructions, and, upon arrival at the independent medical facility, promptly present to the collection facility representative a post-accident shipping box or boxes with all remaining sets of instructions. (Each box contains supplies to collect samples from three employees.) The railroad representative shall request the collection facility representative to review the instructions provided and, through qualified personnel, provide for collection of the samples according to the procedures set out.

The railroad representative shall undertake the following additional responsibilities—

- Complete FRA Form 6180.73 (revised), Accident Information Required for Post-Accident Toxicological Testing, describing the testing event and identifying the employees